

November 19, 1948

Francis J. Donofrio, County Attorney
Maricopa County
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Attention: Warren L. McCarthy, Deputy County Attorney

Dear Mr. McCarthy:

This will acknowledge receipt of your letter of September 24, requesting an opinion regarding whether or not a deputy clerk of the Superior Court can be lawfully appointed for the purpose of filing applications and issuing marriage licenses in cities and towns other than the county seat.

We are in accord with the opinion rendered by the County Attorney on April 28, 1945 and in rendering our opinion we have cited several Sections, besides the one cited by your office that we believe is conclusive, that the intent of the legislature was that the clerk of the court should not appoint a deputy to issue marriage licenses at any other place except at his office in the county seat.

We first invite your attention to Section 21-1901 A.C.A., 1939. Said Section reads as follows:

"Oath and bond of clerk--Office--Records.
The clerk of the superior court, before he enters on the duties of his office, shall take the oath of office, and give a bond in the sum of five thousand dollars (\$5,000) conditioned for the faithful performance of the duties of his office, and the payment of all moneys which may come into his hands as such clerk to the person entitled to receive the same, which bond shall be approved by the chairman of the board of supervisors. He shall keep his office at the county seat of his county, and shall take charge of and safely keep and dispose of according to law, all books, papers and records which may be filed or deposited in his office."

The above quoted Section is specific and mandatory in its requirements fixing the obligation of the clerk of the Superior Court to maintain his office in the county seat of his county. This Section by direction does not allow the clerk of the Court to maintain his office at any place other than the county seat.

Other Sections of the Code indicating clearly the intent of legislature that the clerk of the Court shall maintain his office at the county seat, is to be found in Section 63-103 A.C.A., 1939. Said Section reads as follows:

"No marriage without license. No persons shall be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the superior court of the county in which one of the parties reside (resides), or in which the marriage is to take place. A person desirous of marrying may apply to the clerk of the superior court for a license to marry. The clerk shall require such person to take and subscribe to an oath that he will truly depose and declare to the name and age of himself or herself, the place of residence, the race to which the parties belong and the relationship between the parties applying for such license. The oath shall be filed by the clerk and he shall then issue to said applicants a license directed to the persons, authorized by law, to solemnize the rites of matrimony, which shall be sufficient authority for any one of such persons to solemnize such marriage; provided however, that a justice of the peace, whose office is situated twenty (20) miles or more from the county seat of the county wherein the office of such justice is situated, may receive applications for marriage licenses, within the county wherein he resides, on blanks to be provided by

said clerk, said blanks to conform as to the matters above set forth. Said applications shall be immediately transmitted to the clerk who may, upon receipt of said application, and the payment of the fee therefor, forward the license to the applicants."

The only exception in the Code permitting anyone other than the clerk of the court to issue a marriage license is provided in Section 63-106, A.C.A., 1939. Said Section reads as follows:

"Superintendent or agent of Indian school may issue license and solemnize marriage. The bonded superintendent or agent of an Indian school or agency within the state may issue marriage licenses and solemnize the rites of matrimony. The clerk of the superior court of the county in which the school or agency is located, shall upon the request of the superintendent or agent, issue in blank such licenses as requested and charge the same against such superintendent or agent, and credit the account with the amounts remitted from time to time therefor, and with those returned in blank. Said superintendent or agent shall report immediately to the clerk the issuance of each license and remit therewith the fee therefor. Failure to transmit such report and fee, or the use of the authority herein granted to said superintendent or agent for his personal gain, shall be a misdemeanor."

The legislature has provided under Section 63-103 the procedure to be followed in the issuance of a marriage license by the clerk of the Superior Court, upon application to the justice of the peace who maintains his office at a destination of 20 miles or more from his county seat. It is therein provided that a justice of the peace whose office is situated 20 miles or more from the county seat of the county wherein the office of said justice is situated may receive

application for marriage licenses within his county on blanks to be provided by said clerk. These applications shall be immediately transmitted to the clerk who may, upon receipt of said application, forward the license to the applicants. This particular Section of the statute is to be read in connection with the Section of the statute heretofore referred to wherein the clerk is to file oath before the marriage license is to be issued.

The fact that the legislature has spoken in this regard and has set up a procedure for the issuance of a marriage license upon application to a justice of the peace whose office is situated 20 miles or more from his county seat is, in our opinion, conclusive as to the intent of the legislature and the phrase "expressio unius est exclusio alterius" as applied to statutory construction governs in this particular.

Section 19-306 and Section 19-307 clearly indicate the intention of the legislature was that the clerk of the court should maintain his office at the county seat of his county and at no other place. The Sections above referred to read as follows:

"Section 19-306. Court may be held at Ajo in Pima County. The superior court of the county of Pima may also, whenever in the opinion of the judge of said court the public interests require it, hold sessions of said court at Ajo, in said county, for the trial or hearing of all matters coming before said court. The expenses of the judge and of the officers of the court, attending such sessions, shall be a county charge."

"Section 19-307. Jurisdiction of court at Ajo--Interchanging cases--Records. All persons charged with crime committed within the portion of said county of Pima lying west of the Gila & Salt River Meridian, and all civil actions involving title to, or right of possession of lands lying in said portion of said county, shall be tried at Ajo,

unless the court shall otherwise order. Any other civil action may be tried at Ajo by agreement of the parties, and civil or criminal cases and probate or other proceedings may, by order of court, be transferred for trial or hearing from Tucson to Ajo or from Ajo to Tucson. The pleadings and papers shall be filed in the office of the clerk at Tucson, but whenever a session of court shall be held at Ajo, all files and records in cases there to be considered by the court shall be transferred by said clerk to Ajo, and at the close of such session shall be re-transferred to Tucson."

It is to be noted under Section 19-307, supra, that the pleadings and papers shall be filed in the office of the clerk at Tucson but whenever a session of court shall be held at Ajo, all files and records in cases to be considered by the court shall be transferred by said clerk to Ajo, and at the close of said session shall be re-transferred to Tucson.

Taking into consideration the statutes covering this question as above quoted, it is our opinion that the clerk of the Superior Court may not lawfully appoint a deputy to issue marriage licenses at any other place than his office at the county seat of his county.

Respectfully,

EVO De CONCINI
Attorney General

MAURICE BARTH
Assistant Attorney General

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